

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEWSWEEK, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
~~xxxxxx a Refund~~ :  
of Corporation Franchise :  
Taxes under Article (x) 9-A of the :  
Tax Law for the Year (s) ~~xxxxxx~~ 1973. :

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December, 1978, he served the within  
Notice of Decision by (certified) mail upon Newsweek, Inc.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Newsweek, Inc.  
444 Madison Avenue  
New York, New York 10022

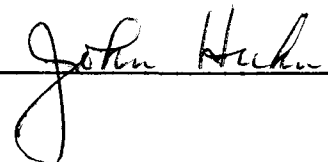
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

13th day of December, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEWSWEEK, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
~~xxxxxxxxxx of a Refund~~ a Refund  
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Taxes under Article (x) 9-A of the  
Tax Law for the Year (xxxxxx) 1973. :

State of New York  
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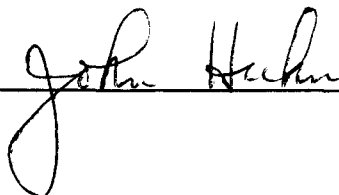
John Huhn, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December, 1978, he served the within  
Notice of Decision by (certified) mail upon Alan Dlugash and  
Robert Eichorn (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Alan Dlugash and Robert Eichorn, CPA's  
Price, Waterhouse and Company  
60 Broad Street  
New York, New York 10004  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

13th day of December, 1978.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**December 13, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Newsweek, Inc.**  
**444 Madison Avenue**  
**New York, New York 10022**

**Gentlemen:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(2)~~ **1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Michael Alexander**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
NEWSWEEK, INC.	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Corporation Franchise	:	
Tax under Article 9-A of the Tax Law	:	
for the Year 1973.	:	

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Petitioner, Newsweek, Inc., 444 Madison Avenue, New York, New York 10222, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1973 (File No. 11680).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 10, 1976 at 9:00 A.M. Petitioner appeared by Price, Waterhouse and Company (Alan Dlugash, CPA and Robert Eichorn, CPA). The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

#### ISSUE

Whether income received by petitioner from its parent company, where such income was generated by investment of petitioner's excess cash in short-term investments, constitutes business income from business capital or investment income from investment capital within the meaning of Article 9-A of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Newsweek, Inc., filed a New York State corporation franchise tax report for the calendar year 1973, indicating thereon that tax due for the year totalled \$233,233.00. The return also indicated entire net income of \$7,560,377.00, investment income of \$1,376,974.00 and business income for allocation of \$6,183,403.00. The business allocation percentage was 41.43% and the investment allocation percentage was 2.1565%.

2. The Corporation Tax Bureau issued a Statement of Audit Adjustment to petitioner dated March 12, 1975 for the period ended December 31, 1973, stating additional tax due (based on a field audit) of \$63,278.00, plus interest of \$4,745.85. After applying credits of \$1,695.66 for 1971 and \$5,022.05 for 1972, a balance due of \$61,306.14 was asserted. A Notice of Deficiency dated May 15, 1975 was issued for the period in question, stating tax due of \$56,560.29, plus interest of \$5,452.85, for a total of \$62,013.14.

3. The two bases for the additional tax asserted are the allocation of advertising receipts and the treatment of certain income received by petitioner as business income, where petitioner had treated such income as investment income. Petitioner concedes the correctness of the allocation of the advertising receipts and

contests only the treatment of interest earned on the investment of capital by the Washington Post Company (the parent company of petitioner) as business income rather than investment income, as claimed by petitioner.

4. On December 1, 1973, petitioner, Newsweek, Inc., was advised by its parent holding company (the Washington Post Company) that all excess cash should be sent to said parent company for investment. Prior to this, Newsweek invested such excess cash. The excess cash was taken from petitioner on a daily basis and investments were made daily.

5. The excess cash invested usually resulted from the time lag between advertising receipts received by petitioner on the tenth day of the month and the expenses of printing which were paid at month's end. This money was invested in "short-term paper," but no evidence of specific investments was proffered.

6. The parent company had total discretion regarding the investment of petitioner's excess cash, allocating to petitioner its proportion of the interest earned on money so invested for petitioner and other subsidiaries.

#### CONCLUSIONS OF LAW

A. That section 208 subdivision 5 of the Tax Law provides: "The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental,..." (underlining added for emphasis).

B. That the term "other securities" as used in the definition of "investment capital" is limited to "...securities issued by

governmental bodies and securities issued by corporations, of a like nature as stocks and bonds, which are customarily sold in the open market or on a recognized exchange, designed as a means of investment, and issued for the purpose of financing corporate enterprises and providing a distribution of rights in, or obligations of, such enterprises. Such 'other securities' thus include debentures, notes and certificates of indebtedness which have many of the essential characteristics of bonds, and certificates of interest and other instruments evidencing proprietorship rights in corporate enterprises which have many of the essential characteristics of stock. They do not include corporate obligations not commonly known as securities, such as real property or chattel mortgages, contracts of sale, purchase money obligations, short-term notes, bills of lading, bills of exchange and other commercial instruments." Section 3.31(c), ruling of State Tax Commission with respect to franchise tax on business corporations (issued March 14, 1962), formerly cited as 20 NYCRR 3.31(c).

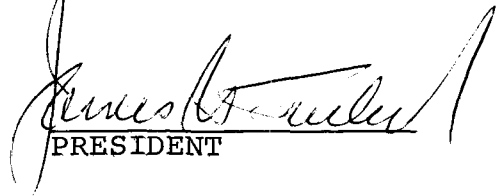
C. That since the investments made on behalf of petitioner were not in "stocks, bonds or other securities," such excess cash was not investment capital; thus, the income therefrom could not then be investment income (Tax Law § 208 subd.6), such income

instead being business income. International Harvester Company v. State Tax Commission 58 AD 2d 125, 396 NYS 2d 82 (3rd Dept. 1977).

D. That the petition of Newsweek, Inc. is denied and the Notice of Deficiency issued May 15, 1975 is sustained.

DATED: Albany, New York  
December 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER